



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

MAY 13 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7014 1200 0000 6124 0077

Heath Van Essen
(d/b/a Van Essen Feedlot)
303 North Maple
Inwood, Iowa 54240

Re: Request for Information
Notice of Potential Violation of Administrative Order for Compliance

IMMEDIATE ATTENTION REQUIRED

Dear Mr. Van Essen:

This correspondence concerns the operation of the Van Essen feedlot, which you own and/or operate, located in Section 27 of Township 98 North, Range 47 West, in Lyon County, Iowa (Facility), and has a street address of 2020 260th Street, Inwood, Iowa. The U.S. Environmental Protection Agency inspected your feedlot on June 18 and 19, 2014, and observed and sampled pollutant discharges from the feedlot to Dry Run Creek. The EPA's June 2014 inspection was conducted pursuant to the authority of Section 308 of the Clean Water Act, 33 U.S.C. § 1318. The samples confirmed that discharged process wastewater had pathogen concentrations of 92,000,000 colonies of bacteria per 100 milliliters and resulted in an in-stream concentration of 52,000 after mixing in Dry Run Creek. To put these concentrations in perspective, the Iowa water quality standard for the bacteria is 126 colonies per 100/ml. The discharges of bacteria and other feedlot-related pollutants presented a threat to human health and the environment.

On January 13, 2015, the EPA issued you an administrative compliance order (2015 Order, Docket No. CWA-07-2015-0013). The Order required you to comply with the Clean Water Act by eliminating all pollutant discharges to waters of the United States or obtaining a permit as a medium Concentrated Animal Feeding Operation. The Order also contained reporting obligations regarding actions you have taken to meet the requirements of the Order and the CWA.

By correspondence dated October 16, 2015, the EPA issued you a notice of violation regarding your failure to comply with the Order that directed you to provide a response within 14 days describing how you would be in compliance with the CWA, specifically what actions you have taken to permanently remedy the conditions causing the discharges observed by the EPA. In response to the EPA's letter, you submitted to the agency a November 5, 2015 completion letter with an "as-built" drawing prepared by ProAg Engineering, Inc., that diagramed the "as built" upgrades to your feedlot (November 2015 Report). The November 2015 Report states:

“These improvements and Heath's continued active management will prevent intermittent or sporadic discharges from recurring.

Accordingly, Heath Van Essen's feedlot should clearly not meet the EPA definition of a Large or Medium CAFO. The above mentioned improvements and continued active management will prevent: a.) pollutants from discharging into waters of the United States through a man-made ditch, flushing system, or other similar man-made devices; and/or b.) pollutants from discharging directly into waters of the U.S. which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with animals confined in the operation.”

The agency has evaluated the “as built” design specifications provided in the November 2015 Report. As part of its evaluation, the agency compared the estimated storage capacity of the facility presented in the November 2015 Report and how the runoff controls function and compared those functions to chronic precipitation events over the last 20 years. This comparison raises concerns that the controls installed at your facility may not be sufficient to contain chronic precipitation events comparable to those previously experienced at the feedlot. Moreover, the November 2015 Report also indicates that a system of pumps and pipes has or will be constructed to transport collected process wastewater to containment structures. The agency believes that the operation of these systems will require constant attention to proper operation and maintenance for the system to operate to eliminate future discharges. Further, man-made ditches, flushing systems, or similar man-made devices in the form of pumps and piping remain present at the facility and that those man-made conveyances would facilitate discharges to waters of the United States when precipitation events exceed storage capacities.

As stated in the agency's October 16, 2015 letter, a CAFO that has discharged to waters of the United States without a permit remains in violation of the CWA so long as there is a continuing likelihood that intermittent or sporadic discharges will recur. It is well established that point source discharges of pollutants to waters of the United States, whether continuous or intermittent and sporadic, require National Pollution Discharge Elimination System permit coverage. CAFOs that have discharged in the past are generally expected to have such discharges in the future, and are therefore expected to obtain a permit, unless the conditions that led to the discharge are fully remedied. Compliance with the CWA at your feedlot requires permanent measures that eliminate the cause of the discharge to waters of the United States or for you to obtain NPDES permit coverage that authorizes such discharges. To date, the agency understands that you have chosen not to obtain authorization under a permit and, therefore, the agency must investigate and determine whether the controls you have proposed and/or installed in conjunction with their operation and maintenance are adequate to prevent all pollutant discharges to waters of the United States from occurring.

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the agency to require the submission of any information necessary to carry out the objectives of the CWA, 33 U.S.C. § 1251 *et seq.* The purpose of this Request for Information is to obtain additional information so the agency may assess and respond to your representation that the causes of the discharges observed by the agency at the Facility are permanent measures that fully remedy the cause of discharges to waters of the United States.

Under the authority of Section 308 of the CWA, the agency hereby requires you to provide the information requested in **ENCLOSURE 1** in accordance with **the deadlines and instructions set forth therein.**

Guidance on How to Respond

Please read the instructions included in ENCLOSURE 1 carefully before preparing your responses to this Information Request. Your response is required within 21 days of your receipt of this letter unless the obligation to respond has been suspended or extended by written authorization from the agency.

Lastly, the agency has not received the quarterly reports that were due in October 2015 and January 2016, as required by Paragraph 38 of the 2015 Order. Please provide the required reports, with accompanying documentation immediately. Please understand that the reporting requirements of the 2015 Order remain in effect until terminated by the agency, and are separate and independent from obligation to respond to this Request for Information.

We appreciate your cooperation and prompt attention to this matter. If you have any questions regarding this information request or the obligation to satisfy the reporting requirements of the 2015 Order, please contact Mr. Don Hamera of my staff at phone number (913) 551-7818.

Sincerely,



Karen A. Flournoy

Director

Water, Wetlands and Pesticides Division

cc: Ken Hessenius, IDNR

ENCLOSURE 1

REQUEST FOR INFORMATION

Re: Heath Van Essen, Van Essen Feedlot

This information is requested by the U.S. Environmental Protection Agency, and response is required from Heath Van Essen the owner and operator of an animal feeding operation doing business as Van Essen Feedlot, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.

I. Instructions

1. Please provide a separate response to each and every request set forth below. Please label each response in a manner that identifies the number of the question or document request. You are required to provide all requested information, including information that may not be in your direct possession, but that you have the ability to obtain upon request or demand. This includes information in the possession, custody or control of employees and/or contractors of Heath Van Essen.
2. If any response cannot be provided in full, provide the response to the extent possible along with an explanation of why the response cannot be provided in its entirety. If responsive information is in the possession of a third party that will not provide the information to Heath Van Essen, identify the third party and describe any reasons given for not providing the responsive information.
3. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to the EPA within ten (10) business days of when the information or documents become known or available. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is inaccurate, false or misrepresents the truth, you must notify the EPA of this fact immediately and provide a corrected response within ten (10) business days of when you find the information is false or misrepresents the truth.
4. Certification. The Statement of Certification found in ENCLOSURE 2 must be submitted along with your responses. This statement must be made by Heath Van Essen or a person authorized by him to sign reports pursuant to 40 C.F.R. § 122.22(a). For your convenience, a form consistent with the text of 40 C.F.R. § 122.22(a) is included on ENCLOSURE 2.
5. Confidential Business Information. If you believe any of the requested information is confidential, you may assert a business confidentiality claim under the provisions of 33 U.S.C. § 1318, 18 U.S.C. § 1905, and the regulations at 40 C.F.R. Part 2, and in the manner described at 40 C.F.R. § 2.203(b). Information requested by this letter, however, must be submitted to the EPA regardless of such a claim of confidentiality. If the EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, the EPA may make the information available to the public without further notice to you.
6. Accurate and Truthful Information Required. Compliance with this information request is mandatory. Please be advised that the failure to respond accurately, or the submission of false information, may subject you to civil or criminal penalties under Section 309 of the CWA, 33 U.S.C.

§ 1319, and/or 18 U.S.C. § 1001. Please be aware that the issuance of this letter and your response with the requested information does not relieve you of any responsibility under the Act for seeking, maintaining, or complying with an applicable NPDES permit.

7. Submission of Response to Information Request. All responses to this Information Request must be submitted within TWENTY ONE (21) days of receipt of this letter. Each response should be submitted in a manner that allows you to track delivery, and must be submitted to:

Don Hamera, Compliance Officer
U.S. Environmental Protection Agency
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

8. Requests for Extension of Time to Respond. If you believe for any reason that you will not be able to send a complete response to this Information Request within 21 days, you may submit a written request for an extension within five (5) calendar days of receipt of this letter. When requesting an extension, you must specify which questions you will need additional time to answer. All other responses should be submitted on or before the end of the twenty-one (21) day response period. For more information, contact Mr. Hamera at 913-551-7818.

II. Definitions

The following definitions shall apply to the following words as they appear in this Request for Information:

1. The terms "you" or "Respondent" shall mean the Mr. Heath Van Essen (d/b/a Van Essen Feedlot) and all employees, contractors, agents, servants, representatives, attorneys, or other persons previously or presently, directly or indirectly, employed or retained by Van Essen or anyone else acting on Respondent's behalf or otherwise subject to Respondent's control, including any company or person from which Respondent has the ability to obtain information on demand.

2. The term Van Essen Feedlot (d/b/a Van Essen Feedlot) shall mean the business entity (whether a person, sole proprietorship, partnership, or incorporated entity) operating the Van Essen Feedlot Facility and all employees, contractors, agents, servants, representatives, attorneys, or other persons previously or presently, directly or indirectly, employed or retained by Van Essen Feedlot or anyone else acting on the Van Essen Feedlot's behalf or otherwise subject to its control, including any company or person from which Van Essen Feedlot has the ability to obtain information on demand.

3. The term "Facility" shall mean the "Animal Feeding Operation," as defined by 40 C.F.R. § 122.23(b)(1), that Heath Van Essen owns or operates that is located in Section 27 of Township 98 North, Range 47 West, in Lyon County, Iowa, and has a street address of 2020 260th Street, Inwood, Iowa.

4. The term "person" shall have the same definition as in Section 502(5), 33 U.S.C. § 1362(5) of the CWA: an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

5. "Discharge" or "Discharge of pollutants" shall mean any action within the meaning of these terms, as defined at Section 502 of the CWA, 33 U.S.C. § 1362, and all regulations promulgated thereunder.
6. "Chronic precipitation event" in this case means the maximum 15 day precipitation total which occurred a year. For the purposes of this Request for Information, based on historic precipitation data, a chronic precipitation event will be considered a twelve (12) inch rainfall event over a 15 day period (For illustration, See Enclosure 3).
7. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and telephone number, and present or last known job title, position or business.
8. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form, (e.g., corporation, partnership, etc.) organization, if any, and a brief description of its business.
9. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
10. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memoranda of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc, or disc pack, any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack tape or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to, or enclosures with, any document and (e) every document referred to in any other document.
11. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Request for Information any information which might otherwise be construed to be outside of its scope.
12. The term "arrangement" means every separate contract or other agreement, verbal or written, between two or more persons.
13. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.

14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA, 33 U.S.C. § 1251, et seq, and regulations promulgated thereunder, in which case the statutory or regulatory definitions shall apply (See definition of “waters of the United States” (40 CFR 122.2) and the definition of “process wastewater” (40 CFR 122.23)).

III. Requested Information

Please submit your response to this Information Request within twenty one (21) days of receipt, unless a different specific deadline for submission is stated. Please clearly identify your responses with a numbering system corresponding to the questions as listed below. (See, Section I, Instructions.) Should you not have the information requested, you must provide a response stating that you have no such information, documentation, records, etc. This is required for each numbered or lettered question to which you are unable to provide the requested information.

Note that except for a cover letter or memorandum and the Statement of Certification, 1) only copies, and not original documents, should be submitted pursuant to this request, and 2) documents and data may be submitted on a compact disk in PDF, Word, Excel or other widely available electronic format.

Preliminary Information

1. Identify the person to contact regarding your response, including title, address and phone number.
2. Your responses to the questions may require the assistance of a qualified professional. Provide the name and credentials of the person(s) providing information in response to this Information Request.

With Regards to documentation submitted in the November 2015 Report:

3. Provide copies of up to date “as built” diagrams of the runoff and process wastewater control structures at the Facility that document any additional construction and installation of controls since the November 2015 submittal.
4. Please describe in detail the procedures you have in place to prevent pollutant discharges when single-day or multi-day precipitation events exceed the design capacity of the runoff controls that have been or will be installed. In this description, please specifically detail how you intend to dewater runoff control structures when land application areas are unavailable because of chronic precipitation events and saturated soil conditions. Please identify what pumping and land application equipment, with capabilities and capacities, you have available (e.g. center pivot, travelling gun, tanker trucks etc.) to ensure process wastewater is applied at agronomic rates and to timely dewater storage basins to ensure the structures do not release manure or process wastewater.
5. For the period between September 1, 2015 and the present, provide the dates and estimated volumes of any process wastewater released from each storage basin or terrace at the Facility. For each release identified, provide an estimate of the accumulated precipitation (in terms of inches of precipitation and estimated volume flowing into the each storage basin or terrace in gallons) in the 48 hours before the release occurred. For each release identified, state whether the released manure or process wastewater discharged to Dry Run Creek and/or its tributaries.

6. For the period between September 1, 2015 and the present, provide estimates and all available documentation of the dates and estimated volumes of solids/sedimentation removed from the runoff and process wastewater control systems at the Van Essen Feedlot. Specifically, please separately provide estimates of the volume of solids and accumulated process wastewater removed from each of the five separate storage basins. These include, among other things, the newer southwest basin, the pre-existing basin on the northeast side and the 3 earthen runoff retention terraces.

7. For the period between September 1, 2015 and the present, provide a description of, and copies of any and all available documentation of, all maintenance performed on the Facility's runoff control system (for example, berm repair, pump or equipment repairs, pipe replacement, etc.).

With regards to specific elements of the upgrades and operations of the Facility:

8. The "as-built" diagram of runoff controls submitted in the November 2015 Report describes the installation of an automatic pumping system from the southwest basin to the lagoon. State whether this automatic pumping system has been installed. If not, provide the dates that the system is planned to be installed. Also provide the pumping rate/capacity in gallons per minute for this pump. At what percentage capacity for the southwest basin do you plan to start pumping to the lagoon?

9. State whether a solid settling device has been installed at the Facility (at the northwest portion of the feedlot). If not, provide the dates that the device is planned to be installed.

10. The "as-built" diagram of runoff controls submitted in the November 2015 Report identifies installation of irrigation pipe to go out 60 feet from the last runoff retention terrace. State whether this irrigation pipe has been installed, provide the date of installation and a description of any variances from the "as-built" drawings. If not already installed, provide the anticipated installation date.

11. Explain how you will operate the 60 feet of gated pipe to ensure the agronomic application of manure and process wastewater to prevent discharges to Dry Run Creek and/or its tributaries, especially under heavy or chronic rainfall conditions when soils are already saturated and thus soil infiltration is unlikely. State whether you plan to sample the discharge from this gated pipe as the tile line inlet across the road is approximately 300 feet away. Since a tile inlet is only 300 feet down gradient of the gated pipe and, based on historical rainfall data, basin dewatering via the gated pipe during large single and chronic precipitation events will likely be necessary, provide a detailed explanation of how you intend to demonstrate that runoff entering this drainage tile does not contain process wastewater. Provide copies of any documentation that evaluates any possible discharge from the Facility entering the nearby drain tile system.

12. State whether you have been trained on how to operate the agri-drain system on the east side of your facility. If so, identity the persons that provided such training, the date(s) any such training occurred and all documentation of such training.

13. Provide copies of all operating, inspection and/or maintenance records for the period between September 1, 2015 and the present that describe wastewater levels and sedimentation levels and/or cleanouts of the five storage basins, and/or maintenance of the berms of the five storage basins.

14. Describe the schedule(s) on which you plan to perform maintenance on the runoff control structures described in the November 2015 Report, including schedules to perform cleanouts of the five

storage basins, maintenance or inspections of pumps and pumping systems, and/or maintenance of the berms of the five storage basins.

ENCLOSURE 2:

CERTIFICATION STATEMENT

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Date

Heath Van Essen
d/b/a Van Essen Feedlot

ENCLOSURE 3:
Rock Valley, Iowa



